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FILED
FEB 7 2003
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No. 02-988

In The
Supreme Court of the United States

HARTFORD INSURANCE COMPANY OF THE MIDWEST, an Indiana corporation,

Petitioner,

vs.

CATT MICHELE HUTH, an individual,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF FOR PETITIONER

STEVEN PLITT
Counsel of Record
SHUGHART THOMSON KILROY GOODWIN RAUP, P.C.
3636 North Central Ave., Suite 1200
Phoenix, AZ 85012
Telephone: (602) 650-2000
Facsimile: (602) 264-7033

Attorney for Petitioner

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REPLY BRIEF FOR PETITIONER

Respondent Huth's opposition brief essentially ignores petitioner Hartford's issues. Respondent instead pretends that Hartford is raising some entirely different issue, and then suggests helpfully that the Court has already resolved it.

Petitioner is not arguing, as respondent wrongly claims, that "a federal court has no discretion to deny discretionary federal jurisdiction in any FDJA case in which the plaintiff's state court declaratory action has been removed." (Opp. at 1). Instead, Hartford expressly asked the Court to address the *extent* of discretion a federal district court has to abstain where, as here, there is no pending concurrent state court action. *See* Pet. at i, 13-14.

The Court in *Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995), left this exact question unresolved:

> We do not attempt at this time to delineate the outer boundaries of that discretion [to abstain in declaratory judgment actions] in other cases, for example, cases raising issues of federal law *or cases in which there are no parallel state proceedings.*

515 U.S. at 290 (emphasis added). Respondent never addresses this issue left open in *Wilton,* and respondent never explains why the Court should decline to address it now.

Nor, as respondent also claims, did Hartford ignore *Quackenbush v. Allstate Insurance Co.*, 517 U.S. 706 (1996). To the contrary, petitioner cited *Quackenbush*, expressly noting that "a federal court has more discretion

to abstain when the action before it is based on the Federal Declaratory Judgment Act." (Pet. at 10). There is no question that a federal district court may not only abstain, but *remand,* when abstention is otherwise proper.[1] But respondent forgets two things. First, the action the district court here purported to remand was not a federal declaratory judgment action, but was instead a *state* action, filed under the Arizona Declaratory Judgments Act, over which the court admittedly had removal jurisdiction. *See Kirkbride v. Continental Cas. Co.,* 933 F.2d 729, 733-34 (9th Cir. 1991) (rejecting attempt to rely on broad discretion to decline to hear *federal* declaratory actions where case at issue was instead a removed *state* declaratory action).[2]

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[1] In *Quackenbush* itself, for example, there was a concurrent pending state court action that might have helped support a remand on abstention grounds, had the Court not otherwise found that a remand there was improper. *See* 517 U.S. at 709, 731.

[2] Unlike the Federal Declaratory Judgment Act, the Arizona Act does not grant courts wide discretion to refuse to entertain declaratory judgment cases. *See* A.R.S. § 12-1831 (Pet. at 2). The Arizona Act instead confers the broad power to "declare rights, status and other legal relations whether or not further relief is or would be claimed," *id.*, and limits that jurisdiction only with the following narrow exception:

> The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

A.R.S. § 12-1386. The Arizona Supreme Court has confirmed the narrow discretion a court has to decline to exercise jurisdiction under this Act. *See Pena v. Fullinwider*, 601 P.2d 1326, 1329 (Ariz. 1979) (reversing trial court's refusal to grant relief under the Arizona Declaratory Judgments Act, and stating: "The refusal to grant declaratory relief is limited to cases where a declaration of rights would be *unnecessary or improper* at the time under all the circumstances.") (emphasis added).

Second, at the time the district court purported to remand the state action on abstention grounds, there *was* no parallel state court proceeding. Thus, even if jurisdiction had been wholly discretionary under the removed state court action, the remand here still raises the exact question left open in *Wilton*: was an abstention-based remand proper where there was no pending state court action?

It is no answer to argue, as respondent does, that the removed case below was a pending state court action. As noted in the petition, courts have recognized that a *removed* action is no longer a pending state court case that can be used to support abstention. *See generally* Pet. at 8-9, 11-12; *Myles Lumber Co. v. CNA Fire Corp.*, 233 F.3d 821, 824-25 (4th Cir. 2000); *Kirkbride v. Continental Cas. Co.*, 933 F.2d at 734. These same courts have refused to allow an abstention-based remand of the removed case, because they concluded that abstention was improper where there was no pending state court action. *Id.* The fact that other courts, including the Ninth Circuit below, have reached the opposite conclusion, and have *allowed* such remands (*see* Pet. at 13), simply highlights the need for the Court to now intercede and answer the question it left open in *Wilton* by delineating the boundaries of a district court's discretion to abstain where no pending state action exists.

Respondent argues simplistically that, because the Court noted in passing in *Quackenbush* that a federal court could abstain "or remand" where abstention is otherwise proper, the issue now raised has already been decided. But no one disputes that abstention-based remand may at times be proper. The question is whether it is proper *here*, where there is no concurrent pending state court action, and where the district court had admittedly

valid *removal* jurisdiction over a *state* declaratory judgment action.

The petition for certiorari should be granted.

Respectfully submitted,

STEVEN PLITT
Counsel of Record
SHUGHART THOMSON KILROY
GOODWIN RAUP, P.C.
3636 North Central Ave., Suite 1200
Phoenix, AZ 85012
Telephone: (602) 650-2000
Facsimile: (602) 264-7033

Attorney for Petitioner